sation whatever his present wage-earning capacity may be." I do not think that result follows at all from the form of order which was there pronounced. My view of the effect of the order is expressed in that part of my opinion where I say—"I propose to your Lordships that we should remit to the learned arbitrator to reconsider his opinion, having in view the fact, as he himself has found, that permanent injury has been suffered by this man in consequence of the accident which befell him, and to consider whether or no in view of that finding he should pronounce a suspensory order as I have called it, or, if he thinks proper, repeat the finding which he has already given."

I move your Lordships, therefore, in this case not to answer the question meanwhile but to remit to the arbitrator in the terms suggested.

LORD MACKENZIE—I agree with your Lordship.

LORD SKERRINGTON—I also agree.

LORD JOHNSTON was not present.

The Court pronounced this interlocutor—

"The Lords having considered the Stated Case on appeal and heard counsel for the parties, *hoc statu* recal the determination of the Sheriff-Substitute as arbitrator appealed against, and remit to him, in view of the finding that the claimant has permanently lost the sight of his left eye, to consider and decide whether the ending of the payments should be permanent or temporary."

Counsel for the Appellant—Chisholm, K.C.—Gibb. Agent—E. Rolland M'Nab, S.S.C.

Counsel for the Respondents—Moncrieff, K.C.—M. P. Fraser. Agents—Simpson & Marwick, W.S.

Wednesday, March 7.

SECOND DIVISION.

[Sheriff Court at Glasgow.

J. HAY & SONS *v.* OCEAN STEAMSHIP COMPANY, LIMITED,

et e contra.

Expenses — Ship — Collision — Nautical Assessor's Fee—No Expenses Found Due to or by Either Party.

In conjoined actions of damages arising out of the collision of two ships the appellants' vessel was found to have been in fault by the Sheriff-Substitute, and they were ordained to pay the nautical assessor's fee out of money consigned by them. On appeal the Court recalled the Sheriff-Substitute's interlocutor except in so far as it fixed and authorised payment of the nautical assessor's fee in the Sheriff Court, and found that the collision was equally contributed to by the fault of both vessels, and that no expenses were due to or by either party either in the appeal or in the Sheriff Court. The appellants thereafter presented a note craving the Court to ordain the respondents to pay one-half of the nautical assessor's fee in both Courts. Without pronouncing an interlocutor the Court *directed* that each party should pay one-half of the nautical assessor's fee in the Court of Session.

Observed that the question of liability for the nautical assessor's fees in both Courts ought to have been raised at the conclusion of the case when the question of expenses was discussed and determined.

On 9th November 1915 Messrs J. Hay & Sons, *pursuers and respondents*, sued the Ocean Steamship Company, Limited, *defenders and appellants*, in the Sheriff Court at Glasgow for £2200, being the damage sustained by the s.s. "The Marchioness" in a collision with the s.s. "Peleus," of which the defenders were the owners. On 23rd November 1915 the defenders raised a counteraction against the pursuers claiming £5000 as damages, and the actions were conjoined. Each vessel alleged fault on the part of the other.

On the motion of the defenders the Sheriff-Substitute (CRAIGIE) on 6th April 1916 appointed Captain Wood to act as Nautical Assessor at the trial of the cause, and appointed them to consign in the hands of the Clerk of Court the sum of £20 to meet his fee and expenses.

After proof the Sheriff-Substitute found on 28th June 1916 that the defenders, were liable to the pursuers for the loss, injury, and damage suffered by them through the said collision, and granted leave to appeal. He fixed the fee and expenses of the Nautical Assessor at the sum of £16, 16s., and authorised the Clerk of Court to pay over said sum out of the amount consigned in his hands.

On 7th July 1916 the defenders appealed to the Second Division of the Court of Session, and thereafter lodged a note craving the Court to direct a nautical assessor to be summoned to attend the hearing on the appeal. The Court appointed Captain P. W. Tait, Leith, as Nautical Assessor.

On 9th, 10th, 11th, 12th, and 16th January 1917 the appeal was heard before the Second Division (the LORD JUSTICE-CLERK, LORD SALVESEN, and LORD GUTHRIE), along with Captain Tait as Nautical Assessor, and on 16th January the Court pronounced an interlocutor sustaining the appeal, recalling the interlocutor of the Sheriff-Substitute appealed against except in so far as it fixed and authorised payment of the Nautical Assessor's fee and expenses in the Sheriff Court, and affirming such portion of the interlocutor finding that the collision was equally contributed to by the fault of both vessels and that the damage fell to be distributed accordingly, and further finding neither party entitled to expenses either in the Court of Session or in the Court below.

Captain Tait's account amounted to £17.

On 7th March 1917 the appellants presented a note to the Court asking that the respondents should be ordained to pay one-half of the Nautical Assessor's fee and

expenses in the Court of Session and in the Sheriff Court.

Counsel were heard in the Single Bills.

Argued for the appellants — The appellants had to deposit the money from which the Nautical Assessor was paid. The respondents should be ordained to pay one-half of the Assessor's fees in both Courts. Both ships had been found to be in fault, and no expenses had been found due to or by either party.

Argued for the respondents—If the motion were granted it would really result in a modification of the respondents' expenses. The fee was exactly in the same position as an account for printing, and each party had to pay his own expenses and no part of the other party's expenses. In any event the motion was too late. The question of expenses had been decided, and the Court should not open up the matter again.

Without pronouncing an interlocutor the Court, in respect that there was no settled practice, directed each party to hand a cheque for £8, 10s. to the Clerk of Court in order to pay the Nautical Assessor's fee and expenses of £17 in the Court of Session. The Clerk was authorised to repay to the appellants the sum of £25 which they had consigned to meet said fee and expenses. The Court intimated that they refused to interfere in regard to the Nautical Assessor's fee in the Sheriff Court; and further stated that the question of the Nautical Assessor's fees in both Courts would in future have to be dealt with when the question of expenses was disposed of.

Counsel for J. Hay & Sons — Gentles. Agent—Campbell Faill, S.S.C.

Counsel for the Ocean Steamship Company, Limited — Brown. Agent — J. & J. Ross, W.S.

Wednesday, March 7.

EXTRA DIVISION.

CAMERON'S TRUSTEES *v.* CAMERON AND OTHERS.

Succession—Husband and Wife—Jus relictæ—Claim to Specific Asset in Satisfaction pro tanto of Jus relictæ.

A widow electing *jus relictæ* in lieu of testamentary provisions in her favour claimed a transfer of one-third of certain shares forming an asset of the husband's estate and specifically bequeathed by him.

Held that the principle enunciated in *Tait's Trustees* v. *Lees*, 1886, 13 R. 1104, 23 S.L.R. 782, applied, and that accordingly the widow could not demand the transfer in satisfaction *pro tanto* of her claim.

A Special Case was presented for the opinion and judgment of the Court by the Rev. Æneas Geddes and others, the trustees under the trust-disposition and settlement of the late John Cameron, at one time sheep farmer in Patagonia, and afterwards of Lakeview, Errogie, Inverness-shire, *first parties*, the truster's widow, *second party*, the truster's daughters, *third parties*, and two other legatees, *fourth parties*, to decide whether the widow, who had claimed her *jus relictæ*, was entitled *in forma specifica* to a third of certain shares held by the truster.

The truster died domiciled in Scotland on 1st June 1911, survived by his wife and three children of his marriage. His trust-disposition and settlement, dated 30th May 1911, conveyed his whole estate to trustees. The purposes of the trust were, *inter alia*, (first) payment of debts; (second) conveyance to his widow of certain heritage in Inverness (valued at £800), delivery to her of such portion (not exceeding one-half) of his household furniture as she might select, and payment to her of £1250 and of the rent of his property at Errogie for a certain period; (third) transfer to his three daughters of his shares in the Sociedad Explotadora de Tierra del Fuego in equal parts; (fourth) certain pecuniary legacies; (fifth) and (sixth) specific bequests to granddaughters; and (lastly) division of the residue equally among his daughters.

The *settlement* contained, *inter alia*, the following declarations: — "Declaring that the provisions hereby made in favour of my wife and children shall be accepted by them as in lieu and in full satisfaction of their whole legal rights of every description to which they would be entitled, or could claim or demand by or through my death; and in the event of them or any of them claiming her legal rights, she shall forfeit all right and interest and benefit under these presents: And I further declare that the whole legacies and other bequests herein made shall be paid free of all legacy, succession, or other government death duties."

After payment of debts the truster's moveable estate amounted to £15,053, 0s. 11d. His heritage was valued at £1400. The truster's widow declined her testamentary provisions and elected to claim her rights at common law. Owing to her election the estate was insufficient to satisfy the pecuniary legacies, if ranked equally, and government duties. At the date of the truster's death the share capital of the Sociedad Explotadora de Tierra del Fuego (a Chilian company) amounted to £1,500,000 shares of £1 each, or the Chilian equivalent. After the truster's widow had intimated her election, but before satisfaction of her claims had been made by the executors, the Sociedad increased its capital by 300,000 bonus shares paid for out of its real estate fund — a reserve fund of accumulated profits. These shares were allotted *pro rata* among the shareholders. The truster had held 3900 shares, valued at his death at £7800, and the allotment of bonus shares made the holding 4680 shares.

The second party *contended* that her *jus relictæ* was a right to a share *in forma specifica* of the moveable estate belonging to her husband at his death, and that one-third of the said shares, with the proportion of dividends accrued including the bonus shares, fell to her either under her *jus*